

Study on the impact Act 199 §54 (2013) which amended 21 VSA §643a of the Vermont Workers' Compensation Act to permit injured workers to seek a fourteen-day extension of benefits after receiving notice of intended discontinuance.

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Prior to the passage of Act 199, §54 (2013 (Adj. Sess.) the Vermont Workers' Compensation Act permitted an insurer to discontinue workers' compensation benefits seven days after serving notice of its intent to do so on the injured worker and the Commissioner, along with evidence supporting the proposed discontinuance. The Legislature heard testimony that the Department of labor was unable to review all proposed discontinuances within seven days, and that injured workers frequently were unable to obtain legal counsel and additional medical evidence in their favor in that seven-day period. This created the possibility that an injured worker might be without benefits to which the injured worker was entitled for a month or more until either the Commissioner rejected the insurer's filing or he injured worker submitted sufficient evidence to overcome the denial.

In response the Legislature passed Act 199 §54 (set out below) amending the discontinuance statute to permit the injured worker to file within the initial seven-day period a request to extend benefits 14 additional days, to allow time for the injured worker to gather and submit additional evidence and hire legal counsel, if necessary.

21 VSA § 643a. Discontinuance of benefits [*effective until July 1, 2018*]

Unless an injured worker has successfully returned to work, an employer shall notify both the Commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the Commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the Commissioner and the employee. If the claimant disputes the discontinuance, the claimant may file with the Commissioner an objection to the discontinuance and seek an extension of 14 days. The objection to the discontinuance shall be specific as to the reasons and include supporting evidence. A copy of the objection shall be provided to the employer at the time the request is made to the Commissioner. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the Commissioner determines that the discontinuance is warranted or if otherwise ordered by the Commissioner. Every notice shall be reviewed by the Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the Commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the Department that establishes that a preponderance of all evidence now supports the claim. If the Commissioner's

decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

The Legislature provided that the amended discontinuance language would sunset on June 30, 2018. The Commissioner was directed to study the impact of Act 199 §54 and report back to the Legislature.

Sec. 54c. STUDY; REPORT; DISCONTINUANCE OF BENEFITS

The Commissioner of Labor shall assess the financial and administrative impacts of the statutory revisions to 21 V.S.A. § 643a, as amended by this act, and on or before January 15, 2017 shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a report addressing:

- (1) whether the statutory revisions expedited the discontinuance process;
- (2) whether the statutory revisions affected workers' compensation insurance rates;
- (3) how many requests to discontinue benefits were received, acted on, the time required for action, and whether there was a subsequent order for reinstatement of benefits; and
- (4) any other matters deemed relevant by the Commissioner

Summary of the study results

(1) whether the statutory revisions expedited the discontinuance process.

The statutory revisions did not expedite the discontinuance process. In some cases, it may have actually increased the time needed to review the proposed discontinuance, because it involved reviewing additional evidence, telephone conferences and consideration of legal arguments.

(2) whether the statutory revisions affected workers' compensation insurance rates.

The National Council on Compensation Insurance (NCCI) reports that it does not have detailed data with which to ascertain whether TTD or TPD beneficiaries were able to extend benefits by filing an objection to a proposed discontinuance of benefits. Even if there was evidence that TTD or TPD benefit durations were longer in late 2014 or 2015 compared to pre-S220, NCCI would not be able to specifically attribute such increases to the discontinuance provision (since it has no way of identifying such objections and whether benefit payments are being extended as a result).

According to NCCI filings with the Vermont Department of Financial Regulation (DFR), loss costs decreased an average of 5.6% in 2015, increased 2.6% in 2016, and decreased 7.9% in

2017. A further decrease is anticipated in 2018. The decrease in loss costs and assigned risk rates is attributable to a decline in claims and is not connected to the statutory revision.

(3) how many requests to discontinue benefits were received, acted on, the time required for action, and whether there was a subsequent order for reinstatement of benefits.

The Workers' Compensation Division of the Vermont Department of Labor tracked all discontinuances filed between July 1, 2014 and December 31, 2017. Workers' Compensation insurers filed 2527 discontinuances (Workers' Compensation Form 27) with the workers' Compensation and Safety Division of the Vermont Department of Labor. During that time only 145 injured workers requested the 14-day extension. The Division granted 133 extension requests. Seven were rejected because they were filed after the discontinuance had taken effect. Five requests were not specifically acted on because the department had already rejected the proposed Discontinuance because the insurer failed to submit supporting evidence. On average a request for extension was acted on within 3 days of receiving it.

Although 133 extension requests were granted, the injured worker subsequently submitted additional evidence in only 65 instances. After reviewing the additional evidence submitted the Department rejected the discontinuance in 32 instances (i.e. the insurer was ordered to continue paying the discontinued benefit). In 33 instances the discontinuance was found to be reasonably supported. These were acted on by the workers' compensation division within an average of 29 days.

The workers' compensation division acted on 2527 discontinuances. After division review 1719 discontinuances were found to be reasonably supported. The division rejected 808 proposed discontinuances because the insurer failed to submit "all relevant evidence" with the proposed discontinuance or the division determined that the evidence submitted did not support the proposed action. On average the determination to reject the discontinuance occurred within 34 days. The insurer did not appeal the division's rejection of the discontinuance in 622 of the 808 instances. (The insurer may have gathered additional evidence and submitted a new proposed discontinuance).

Conclusion

There is not sufficient data to determine whether the provision offering injured workers and opportunity to extend benefits an additional two weeks to obtain additional evidence in the injured worker's favor achieved the desired result. The provision was not widely used (145 times out of a possible 2527 discontinuances), and where it was used additional evidence was only offered in approximately half the cases (65 out of 133). There is no evidence that the extension provision increased the price of workers' compensation premiums and it did not make the system any more efficient.